

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY RALPH MATTISON,

Plaintiff,

Case No. 13-cv-11026

v.

HONORABLE STEPHEN J. MURPHY, III

MITCH PERRY,

Defendant.

ORDER DENYING MOTION TO EXTEND STAY (document no. 14),
GRANTING MOTION TO RE-OPEN CASE (document no. 15),
AND DIRECTING THE STATE TO FILE A RESPONSE TO PETITIONER'S CLAIMS

Anthony Mattison is a state prisoner at Newberry Correctional Facility in Newberry, Michigan. He filed a petition for the writ of habeas corpus under 28 U.S.C. § 2254. Before the State could file an answer to the habeas petition, Mattison moved to stay his case and to hold his habeas petition in abeyance while he pursued additional state remedies. The Court granted Mattison's motion and closed the case for administrative purposes. As a condition of the stay, the Court ordered Petitioner to (1) file a motion for relief from judgment in the state trial court within ninety days of the Court's order and (2) file an amended habeas corpus petition and motion to re-open the case within ninety days of exhausting state remedies if he was unsuccessful in state court. Currently pending before the Court are Mattison's motion to extend the stay and his subsequent motion to re-open this case.

In his motion to extend the stay, Mattison states that he filed a motion for relief from judgment in the state trial court within ninety days of this Court's order and that he has exhausted his remedies in the lower state courts. Mattison further alleges that, on April 28, 2015, the Michigan Supreme Court denied leave to appeal the trial court's decision on his

motion for relief from judgment. He has asked the Michigan Supreme Court to reconsider its decision, and he wants the Court to continue holding his habeas petition in abeyance until the Michigan Supreme Court makes a decision on his motion for reconsideration.

Mattison filed his motion to extend the stay on May 14, 2015, but on July 22, 2015, he filed a motion to re-open the case. In light of the motion to re-open, the Court will deny as moot Mattison's motion to extend the stay.

Mattison has also moved to re-open the case to avoid having his habeas claims barred from review. He points out that the Michigan Supreme Court denied leave to appeal on April 28, 2015, and that, as of ninety days later (July 28, 2015), the state supreme court had not ruled on his motion for reconsideration. To avoid violating the second condition of the Court's stay (that he move to re-open his case within ninety days of exhausting state remedies), Mattison seeks to re-open his case now.

The Court anticipates that the Michigan Supreme Court will rule on Mattison's motion for reconsideration within a relatively short time, if it has not already done so, or at least before the State's responsive pleading is due. The Court therefore will allow Mattison to re-open the case even though he apparently has not yet received a decision from the state supreme court on his motion for reconsideration.

WHEREFORE, it is hereby **ORDERED** that Mattison's motion to extend the stay (document no. 14) is **DENIED** as moot.

IT IS FURTHER ORDERED THAT Mattison's motion to re-open the case (document no. 15) is **GRANTED**.

IT IS FURTHER ORDERED THAT the State shall file an answer to the initial petition and the supplemental arguments attached to Mattison's motion to re-open this case within

six (6) months of the date of this order. The State shall file the relevant portions of the state-court record with its answer. Petitioner shall have forty-five (45) days from the date of the responsive pleading to file a reply.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: November 13, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on November 13, 2015, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager